



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

TO: Barry E. Hill, Director, Office of Environmental Justice ("OEJ")
Office of Enforcement and Compliance Assurance ("OECA")

FROM: Theodore J. Kim, Legal Counsel, OEJ/OECA /s/ *Ted Kim*

DATE: October 12, 2005

RE: "Environmental Justice in the News" for the Week Ending October 7, 2005

=====

This memorandum summarizes select environmental justice news actions for the period beginning September 30, 2005 through the week ending October 7, 2005. The summary is limited to Lexis/Nexis searches conducted using the following query: "(environment! w/2 (justice or racism or equity or disproportionate or disparate)) or (environment! w/25 minorit! or low***income) or (executive order 12898) or (civil right! w/25 environmental) or ("fair housing act" w/25 (environment! or zon!))." Please note that multiple articles covering the same topic were not included. Similarly, articles pertaining to international or foreign-based environmental justice issues were not included, unless they specifically pertained to the United States.

1. **News Items.**

The following news was particularly noteworthy:

- **"FEMA to Reserve Contracts for Disadvantaged Companies," The Washington Post, (Oct. 11, 2005) at D1.** On October 10, 2005, the Federal Emergency Management Agency ("FEMA") announced that it would set aside several major reconstruction contracts in the Gulf Coast for small and disadvantaged businesses. The contracts, which will be of an unspecified amount over a five-year period, will be awarded through competitive bidding; however, FEMA indicated that it would give preference to firms based in areas that were most devastated by Hurricane Katrina. FEMA's announcement came at a time in which it faced intense criticism for awarding no-bid contracts to some of the Nation's largest corporations without providing enough work for smaller firms in Louisiana, Mississippi, and Alabama.

- **“Pursuing Justice? Group Seeks Applicants,” Portland Press Herald (Maine Oct. 6, 2005) at B2.** Maine Initiatives announced that it will award three-year grants of up to \$40,000 to local and statewide groups that pursue social, economic, and environmental justice. The application deadline is November 9, 2005.
- **““Martial Law on Civil Rights”” in New Orleans: Jesse Jackson,” Agence France Presse (Oct. 4, 2005).** After an unannounced visit to a hurricane-ravaged New Orleans neighborhood on October 4, 2005, Jesse Jackson decried the response efforts classifying them as ““martial law on civil rights.”” In addition, Mr. Jackson asserted that it was ““corrupt”” that storm survivors were left jobless and half the city staff were being laid off, while contracts to rebuild went to primarily out-of-state corporations, such as Halliburton and Bechtel. Mr. Jackson concluded by asserting that failure to rebuild the predominately African-American Lower Ninth Ward neighborhood would amount to ““racial profiling.””
- **“Children’s Health: Recruitment for Large Federal Study Begins,” American Health Line (Oct. 3, 2005). *See also* “First Sites Picked for Ambitious Child-Health Study,” The Associated Press (Sept. 29, 2005).** On September 29, 2005, the National Institutes of Health, Centers for Disease Control and Prevention (“CDC”), and the United States Environmental Protection Agency (“EPA”) announced that they would cosponsor the National Children’s Study, which would track more than 100,000 children from the womb to the age of 21 to examine numerous environmental factors that may affect children’s health, such as their food, air, and living conditions. Although enrollment will not begin until 2007, the first six sites, where researchers will spend the next year determining how to recruit women and babies that represent the community, were announced. Ultimately, the study will seek participation of 105 communities and will enroll 1,500 women in early pregnancy, or pre-conception, in each county over a five-year period. The study will include a significant number of minority children to address potential health disparities related to environmental factors.
- **“U.S. NIEHS Awards \$37 Million to Train Emergency and Hazardous Waste Workers,” Bioterrorism Week (Oct. 3, 2005) at 5.** The National Institute of Environmental Health will award more than \$37 million in grants to workers involved in emergency response and hazardous waste cleanup. The grants will train the workers to protect them and their communities from exposure to toxic materials. The new awards, which were created in the aftermath of the World Trade Center disaster, will fund five training programs, including the Minority Worker Training Program, which will train disadvantaged urban youth preparing for employment in the environmental restoration and hazardous materials field, and the Brownfield Minority Worker Training Program that will provide

economic and environmental restoration to disadvantaged residents impacted by brownfields.

- **“The Watchdogs Failed; Four Cleanups, Yet Waste Is Still Everywhere,” The Record (New Jersey Oct. 3, 2005) at A1.** Despite four prior cleanups of paint sludge at the Ringwood Superfund Site (“Site”), some residents, including the Executive Director of the Sierra Club in New Jersey, believe that more cleanup is necessary and are urging the New Jersey’s Department of Environmental Protection (“DEP”) to take legal action against EPA and Ford Motor Company. DEP Commissioner Bradley Campbell is aware of the problem and has urged the United States Attorney for New Jersey to pursue criminal charges against Ford, which Campbell believes made false submissions to federal officials regarding the cleanup at the Site. Currently, EPA and Ford are undertaking the fifth cleanup at the Site, which EPA has promised will be comprehensive. In 1994, EPA removed the Site from the National Priorities List; however, based on the current situation, the New Jersey Environmental Justice Task Force has urged that Ringwood be relisted. The Task Force asserted that the residents have been treated unfairly under the Superfund program, claiming that the extent of the cleanup received did not meet expectations.
- **“The Environment: Death and Rebirth,” The American Prospect (Oct. 2005) at A24.** The article discussed how environmentalists, health experts, and poverty advocates are working together to address the urban asthma epidemic. It noted that poor and minority children, in particular, suffer a disproportionate burden of asthma, which may be attributed, in part, to their environmental living conditions. Specifically, it asserted that homes, schools, and workplaces contain mold, dust mites, and cockroaches that may trigger acute attacks and promote the development of asthma. In addition, the article found that poorer communities are more susceptible to other broader environmental hazards, such as elevated ozone, diesel fumes, and other airborne pollutants, and are less likely to receive preventative care, such as monitoring and simple medications, due to a lack of decent health insurance. The article noted that solutions to this urban epidemic are piecemeal due to the divergent interests involved. Accordingly, efforts are underway to better coordinate research on how environmental conditions affect human health. For instance, based upon the National Environmental Public Health Tracking Program established by Congress in 2002, a team of researchers in Alameda County, California have developed a program that utilizes a geographic information system that prints maps that track, among other things, rates of unemployment, poverty, overcrowding, and toxic sites. Based on these maps, changes in land-use decisions, housing developments, or diesel truck routes may occur that may reduce the causes of asthma.

- **“Panel Debates EPA Role in Saying When Storm Areas Are Safe,” National Journal’s Congress Daily (Sept. 30, 2005). *See also* Testimony of Beverly Wright, Director, Deep South Center for Environmental Justice (Sept. 29, 2005).** On September 29, 2005, the House Energy and Commerce Environment Subcommittee held a hearing where witnesses debated the federal government’s responsibility for informing displaced residents when it is safe to return. EPA Deputy Administrator Marcus Peacock testified that while EPA is extensively testing for hazardous substances in areas that Hurricane Katrina affected, EPA’s role is to provide “‘guidance’” to state and local officials who make the final decisions. Residents and environmentalists, however, disagreed with Mr. Peacock’s assessment, stating that EPA has a legal and moral duty to inform people when the neighborhood is safe. In addition, Dr. Beverly Wright, the Director of the Deep South Center for Environmental Justice, spoke at the hearing and provided the most emotional testimony of the session. After providing some background on her organization as well as a historical overview of environmental justice issues in New Orleans, Dr. Wright called for the expansion of chemical testing and timelier reporting of test reports. In addition, she urged EPA to work closely with stakeholders from the impacted region. She concluded by requesting that citizens be given “clear and accurate instruction on procedures for reentering the City and other areas in the Gulf Coast region to protect their health.” In expressing her concerns with the government’s response to Hurricane Katrina, Ms. Wright urged the Committee to remember the “vulnerable communities of color that exist in the shadow of chemical and petro chemical facilities . . . who are especially in harms way.”
- **“Storms Revive Energy Debate,” The Christian Science Monitor (Boston, Sept. 29, 2005) at 1.** In the aftermath of Hurricanes Katrina and Rita as well as the rising fuel costs, legislators and special interest groups are debating the energy policy in the United States. The article asserts that the primary goal of most Republican bills is to increase supply, as evidenced by the “Gasoline for American’s Security Act of 2005,” which would ease restrictions on where refineries may be built, designate closed military bases as refinery sites, and change certain Clean Air Act requirements that apply to refineries. In praising the Bill, industry sources categorize it as “far-reaching.” In contrast, environmental groups assert that the oil industry is using the national disaster to repeal environmental rules designed to protect public health and safety. In addition, they believe that no evidence exists that environmental statutes, like the Clean Air Act, have any relation to the high gasoline prices or the lack of domestic refining capacity. The article concluded that “long-standing concerns about ‘environmental justice’” is a closely related issue.
- **“Rep. Solis: Republican Bill Fails to Address Energy Supply Crisis,” U.S. Fed. News (Sept. 28, 2005).** The article sets forth Representative

Hilda L. Solis' (D-CA) speech on September 28, 2005 during the House Energy and Commerce Committee's markup of the "Gasoline for America's Security Act of 2005." Representative Solis expressed her disappointment with the legislation, which she believed "will do nothing for energy supply and security" but will instead seriously damage public health and the environment. She stated that the legislative process for the proposed legislation was lacking, since no hearings on the proposal were held and no affected community, city, or state, as well as no environmental justice or environmental witness, were heard from. She further noted that her opposition to the legislation was for substantive reasons, such as: (1) the negative impact on public health and quality of life; (2) the failure to protect the minority communities that Hurricane Katrina affected most. Specifically, Representative Solis asserted that the proposal, which could not guarantee a gasoline supply, would worsen public health, because it would roll back clean air protections, lessen the local authorities' ability to protect public health, undermine the Solid Waste Disposal Act, and potentially damage the quality of the Nation's drinking water.

- **"EPA Tells Polluters It Wants Less Data: Rule Changes Would Let Firms Emit More Before Reporting It," Chicago Tribune (Sept. 28, 2005).** Under a recent EPA proposal, industrial companies will no longer have to report most chemical releases of less than 5,000 pounds, which represents a tenfold increase from the current reporting amount of 500 pounds. In addition, factories, power plants, refineries, and other pollution source will be able to report their releases every other year, rather than annually. The article quoted Kimberly Nelson, the Assistant Administrator of EPA's Office of Environmental Information, who commented that the changes were made to reduce the regulatory burden on industries and to allow the Agency more time to review and analyze the data. Critics believe the changes would make it more difficult to track companies and determine pollution trends. More importantly, they assert that the changes would make it difficult to pressure industries to reduce emissions, which may affect communities near the industries who may experience disproportionately adverse environmental or public health effects.
- **"Superfund Website Now Available in Spanish," States News Service (Sept. 28, 2005).** EPA has made its website on the Superfund program available in Spanish to help reach out to the Hispanic community. The site offers a variety of Superfund information, such as fact sheets and questions and answers, to Spanish speakers who may live near Superfund Sites. EPA hopes that the information will provide Hispanics with the necessary tools to allow them to meaningfully participate during the Superfund cleanup process. The Hispanic Community represents one of the fastest growing minority populations in the country. Due to this

growth and the fact that several Superfund sites are near Hispanic demographic centers, the Superfund Program office deemed it necessary to provide resources to Hispanic communities.

- **“Cleanup in New Orleans a Delicate Balancing Act. Experts: Culture Must be Restored with Environment,” Dallas Morning News (Sept. 27, 2005) at 1A.** In the aftermath of Hurricane Katrina, cleanup efforts in New Orleans are being complicated by the need to make the City environmentally habitable and the goal of ensuring that the environmental renewal will help repair the City’s social fabric and shattered culture. The EPA and CDC share the lead environmental roles and have identified numerous obstacles, such as getting rid of flood water, to making the City habitable. To help expedite the cleanup effort, EPA has temporarily waived certain rules, such as open burning. In addition, Senator James Inhofe of Oklahoma has sponsored a bill that would let the EPA suspend its environmental standards for four months, with possible extensions up to eighteen months, during the cleanup effort. These governmental actions, however, concern Dr. Robert D. Bullard, Director of the Environmental Justice Resource Center at Clark Atlanta University. Dr. Bullard believes that New Orleans’ poor population would suffer from the weakened cleanup standards and advocates one fair, just, and equitable cleanup standard for everyone. In addition, the City’s low-income community leaders are requesting a more active voice in the decisions affecting New Orleans to ensure that no disenfranchisement occurs and that the City maintains its distinctive character and history. They point to the fact that local smaller or minority firms have not received any of the available no-bid contracts, which went to large companies. Moreover, they fear that developers and industries may have plans for land that used to house residents.
- **“*Stephen Johnson on Katrina’s Environmental Impact*” (NPR radio broadcast, Sept. 27, 2005).** EPA Administrator Stephen Johnson discussed the hazardous environmental conditions that Hurricanes Katrina and Rita wrought, including bacteria-infested flood water, as well as water containing lead and petroleum products. Administrator Johnson noted that EPA has not received any pressure from the Bush Administration to withhold information, as Hugh Kaufman charged; rather, the pressure has been to ensure that EPA remains responsive to information requests. Administrator Johnson stressed that EPA’s job is to “restore the environment for everybody, regardless of race, regardless of social status.” He reemphasized President Bush’s goal of clearing away the “legacy of inequality,” when cleaning the Hurricane’s debris. Administrator Johnson concluded by noting that the aftermath of Hurricane Katrina presented the biggest environmental challenge that the United States faced due to a natural disaster. Erik Olson, senior attorney for the Natural Resources Defense Council, then joined the program. Mr. Olson believed that two

problems existed: (1) the area of contamination was so large that some areas had not been tested; and (2) the test data had not been timely released. In addition, Mr. Olson expressed concern with the potential exposure to the “toxic soup of contaminants that is in the flood water” that children may face. He concluded by noting his concern that no plan was in place to ensure a fair and full cleanup in every community, which may result in toxins eventually ending up in areas that house the poorest people.

- **“Clayton Landfill Draws Ire,” Atlanta Journal and Constitution (Sept. 27, 2005).** The final public hearing on a proposed landfill in Northern Clayton was held on September 26, 2005. Nearly 100 residents voiced their concern to the Georgia Environmental Protection Division that the landfill would hurt property values and potentially contaminate streams that provide drinking water to the county. In addition, the residents wondered whether placement of the landfill in this location represented an instance of environmental racism, since the area is predominantly African-American.
- **“University of South Carolina Sets \$400K for Storm Study; \$400K for Hurricane Data,” The Biloxi Sun Herald (Mississippi Sept. 25, 2005) at A6.** The University of South Carolina has launched a project that will help Gulf Coast Research institutions capture data that may be used to prepare for the next major hurricane after Hurricanes Katrina and Rita. The school will grant \$400,000 of its research funds for eighteen research proposals. Four to five grants will receive the maximum grant amount of \$25,000. Included among the data that will be compiled will be information on such public health issues as the risk of West Nile Virus after a hurricane, the role of black churches in promoting resiliency, the evacuation response among minorities, and environmental damage to salt marshes.

2. **Recent Litigation.**

- ***Hartford Park Tenants Ass’n v. Rhode Island Dep’t of Env’tl. Management*, C.A. No. 99-3748, 2005 R.I. Super. LEXIS 148 (R.I. Sup. Ct. Oct. 3, 2005).** The Superior Court of Rhode Island held, among other things, that the Rhode Island Department of Environmental Management (“DEM”) violated the environmental equity requirement of the Industrial Property Remediation and Reuse Act (“IPRARA” or “Act”) by approving the City of Providence’s (“City”) decision to build schools at the Springfield Street Construction Site, which was an illegal dump site in the 1950s, without properly: (1) considering issues of environmental equity; and (2) providing for proper notice and community involvement. Under Section 5 of IPRARA, DEM “shall consider the effects that clean-ups would have on the populations surrounding each site and shall consider

the issues of environmental equity for low income and racial minority populations. [DEM] will develop and implement a process to ensure community involvement throughout the investigation and remediation of contaminated areas.” Here, the court noted that the DEM lacked any established policy or procedure for considering environmental equity issues, as “the term is not mentioned in the Remediation Regulations, and there is no evidence of any other published policy.” While the court did not find this determinative of the issue, it could not find any evidence that issues of “environmental equity for low income and minority populations” were even considered. Accordingly, the court found that the environmental equity provision of the IPRARA was violated. In addition, the court found that the DEM violated the public participation requirements of the IPRARA by failing to notify the landowners and tenants that a site investigation was to occur and, subsequently, of the findings of the site investigation. The Site was very controversial, as residents, who were predominantly African-American or Latino, believed that the construction of a new elementary school and two middle schools at the former dump site, which the City operated from the 1960s to the early 1970s, constituted environmental racism. As a result of the court’s holdings, the parties were instructed to confer further to submit either a proposed remedy or suggested dates for a hearing on a remedy.

3. **Regulatory/Legislative/Policy.**

The following list appears to represent the most pertinent items:

A. **Federal Congressional Bills and Matters.**

- **House Resolution 477, “Expressing the Sense of the House of Representatives that the Crisis of Hurricane Katrina Should Not be Used to Weaken, Waive, or Roll Back Federal Public Health, Environmental, and Environmental Justice Laws and Regulations, and for Other Purposes,” introduced on September 29, 2005 by Representative Hilda L. Solis (D-CA). *Status: Referred to House Committee on Energy and Commerce and Committee on Resources on September 29, 2005. See also Senate Resolution, 261, “A Resolution Expressing the Sense of the Senate that the Crisis of Hurricane Katrina Should Not be Used to Weaken, Waive, or Roll Back Federal Public Health, Environmental, and Environmental Justice Laws and Regulations, and for Other Purposes,” introduced on September 29, 2005 by Senator John Kerry (D-Mass.) on September 29, 2005. *Status: Referred to the Senate Committee on Environment and Public Works on September 29, 2005.**** The Resolution opposes attempts to allow EPA to waive any environmental regulation during the cleanup efforts following Hurricane Katrina. According to a press release that Representative Solis issued, the Resolution calls for the protection of

public health and environmental laws during the time period when Gulf coast residents need them the most. The Resolution particularly protects low-income and minority communities, who are most negatively affected by pollution and poor environmental standards. According to the press release, the Resolution ensures that the victims of Katrina are not “victimized twice, first by a hurricane then by Washington’s assault on clean air and clean water.” Senator John Kerry (D-Mass.) introduced Senate Resolution 261 and noted that it will prevent a “sneak attack on environmental justice.” Included among the provisions are: (1) Hurricane Katrina, and other such disasters, will not be used to weaken, waive, or roll back federal public health, environmental, and environmental justice laws and regulations; (2) state, local, and regional authorities will retain their authority for compliance and permitting of industrial and other facilities, as well as their role in enforcing and implementing monitoring and cleanup regulations; (3) testing, monitoring, cleanup, and recovery should be carried out in compliance with Executive Order 12898 and in a manner that, among other things, protects public health and the environment; and (4) federal rebuilding of communities and the economy of the Gulf Region should be the model of the integrated, diverse, and sustainable society that all Americans desire and deserve.

- **S. 1761, “Gulf Coast Recovery Act,” introduced on September 22, 2005 by Senator John Thune (R-SD). Status: *Read for Second Time on September 26, 2005; Placed on Senate Legislative Calendar under General Orders (Calendar No. 222).*** The Bill clarifies the liability of government contractors assisting in the rescue, recovery, repair, and reconstruction work in areas affected by Hurricane Katrina or other major disasters. The Bill found that while public officials are responsible for controlling the federal, state, and local response to any disaster, those officials lack the manpower to implement a response. Accordingly, the Bill determined that these public officials must rely on private contractors for support. The Bill attempts to clarify the liability of private contractors in supporting a federal, state, or local response to a disaster to: (1) ensure that those contractors continue to provide assistance when necessary; and (2) limit legal expenses that inflate the cost of recovery from a disaster. The Bill limits the liability of federal contractors under any provision of federal law or regulation that the Secretary of the Army, the Secretary of Transportation, or the EPA Administrator administers. The Bill also includes a “Litigation Management” section that, among other things, articulates the conditions under which a federal cause of action exists.
- **S. 1718, “Hurricane Katrina Employment and Training Assistance Act,” introduced on September 20, 2005 by Senator Michael B. Enzi (R-WY). Status: *Read for Second Time on September 20, 2005; Placed on Senate Legislative Calendar under General Orders (Calendar No. 215).*** The Bill provides special rules for disaster relief employment under

the Workforce Investment Act of 1998 for individuals that Hurricane Katrina displaced. It articulates special rules for national emergency grants related to Hurricane Katrina. For instance, the Bill expands eligibility for disaster relief to unemployed individuals or employees without any employment history. In addition, it extends the duration of disaster relief employment an additional six months. In addition, the Bill expands eligibility for employment and training activities to workers that have relocated from the disaster area. Finally, the Bill calls for States to operate “mobile one-stop centers,” for workers to use for one-stop delivery systems.

- **S. 1711, “To Allow the Administrator of the Environmental Protection Agency to Waive or Modify the Application of Certain Requirements,” introduced on September 15, 2005 by Senator James Inhofe (R-OK). *Status: Referred to Senate Committee on Environment and Public Works on September 15, 2005.*** The Bill authorizes EPA’s Administrator to waive or modify the application of certain EPA requirements during a 120-day period beginning August 26, 2005, if the Administrator deems that such a waiver or modification is needed to respond to a situation or damage that Hurricane Katrina caused, and is in the public interests. The Bill also permits the Administrator to extend the waiver period not longer than 18 months after the Act is enacted. The Bill requires consultation with the affected States and requires the Administrator to provide notifications of waivers or modifications to specified congressional committees.
- ***Miscellaneous House and Senate Congressional Record Mentions of Environmental Justice include:***
 - **Testimony of Kathleen Blanco, Governor, State of Louisiana, before the Senate Finance Committee (Sept. 28, 2005).** Governor Blanco discussed the economic recovery of Louisiana following Hurricane Katrina and Hurricane Rita. During her testimony, Governor Blanco articulated her plan for recovery, with a focus on providing jobs, housing, and rebuilt communities. In addition, she provided an overview of the affected economy, noting that FEMA declared 28 parishes as major disaster areas after Hurricanes Katrina and Rita. She lent her support to the President’s vision for a “Gulf Opportunity Zone,” which would aid economic recovery through special federal incentives to spur private sector investment. Governor Blanco called for Housing Investment Tax Credits to encourage construction and investment, federal tax relief to encourage individual recruitment and retention, and full tax credits for relocation costs for returning families. Governor Blanco urged the creation of the Louisiana Business Development Fund, which would require \$10 billion in grants for small businesses returning to the area, infrastructure incentives,

business-lease-payment incentives, and retention grants. She discussed other aspects of the economic recovery and touched on the importance of health care, which meets the needs of all citizens, to that recovery. Governor Blanco concluded by recommending that businesses from the disaster area be given preference during the contract period for the cleanup, restoration, and reconstruction process.

- **Federal Register Notices.**

No noteworthy *Federal Register* items were identified for this time period.

B. **State Congressional Bills and Matters.**

- **California, Senate Bill 1110, introduced on March 29, 2005, by Committee on Natural Resources and Water. Status: Passed Assembly on August 30, 2005; Passed Senate on August 31, 2005; Approved by Governor on September 29, 2005; Filed with Secretary of State on September 29, 2005.** The Bill amends Section 339 of the Code of Civil Procedure to amend various sections of various codes. Of particular note was Section 3 of the Bill, which amended Section 65040.2 of the Government Code to require the development and adoption of guidelines for the preparation of mandatory elements required in city and county general plans. According to the amendment, the guidelines must contain guidance for addressing environmental justice matters.
- **Ohio, House Bill 350, introduced on September 27, 2005, by Representative Mike Mitchell (D-Columbus (District 26)). Status: Introduced.** The Bill would require the Director of Environmental Protection to adopt rules establishing standards and procedures for considering environmental justice issues when issuing permits or licenses and taking other actions under state environmental laws.
- **Ohio, House Bill 351, introduced on September 27, 2005, by Representative Mike Mitchell (D-Columbus (District 26)). Status: Introduced.** The Bill proposed the creation of a ten-member Environmental Justice Commission. The Governor would appoint six members, including a resident of an environmental justice community, the House of Representatives and the Senate would each have two members, including one who would be a member of the minority party. The Bill articulated the term-length and specified that members may be reappointed. Finally, the Bill laid out the duties of the Commission, which included: conducting studies of environmental justice issues; establishing policy statements and making recommendations; and coordinating environmental justice programs and policies.